

Virginia Department of Taxation

State Taxation of Transient Accommodations

July 14, 2016

Verona



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any other state -*

Retail Sales and Use Tax

- The Retail Sales and Use Tax is imposed on the retail sale of tangible personal property and specified services, including the sale of accommodations to transients
- The retail sale of accommodations to transients means the sale or charge for any room or rooms, lodging, or accommodations furnished to transients for less than 90 continuous days by any hotel, motel, inn, tourist camp, camping grounds, club, or any other place in which rooms, lodging, space or accommodations are regularly furnished to transients for a consideration
- The accommodations offered by a taxpayer do not need to be provided on a continuous basis in order for them to be considered furnished "regularly," but only need to be offered with some frequency



Retail Sales and Use Tax

- The general rate of the sales tax in Virginia is 5.3% (4.3% state tax and 1% local tax) and applies to the taxable sale of transient accommodations
- An additional 0.7% regional sales tax is imposed in the Hampton Roads and Northern Virginia regions, for a total Retail Sales and Use Tax rate in those regions of 6%, and is applicable to the taxable sale of transient accommodations in those regions
 - The Hampton Roads region consists of the Counties of Isle of Wight, James City, Southampton, and York and the Cities of Chesapeake, Franklin, Hampton, Newport News, Norfolk, Poquoson, Portsmouth, Suffolk, Virginia Beach, and Williamsburg
 - The Northern Virginia region consists of the Counties of Arlington, Fairfax, Loudoun, and Prince William and the Cities of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park



Hotels and Charges by Hotels

- The Retail Sales and Use Tax is imposed on the gross proceeds from the sale or charges for hotel rooms furnished to transients
- Any additional charge made in connection with the rental of a hotel room is deemed to be a part of the charge for the room and is subject to the sales tax
- This includes additional charges for pay-per view movies, television, and video games, local telephone calls and similar services
- Any mark-up made by the accommodations provider over the cost of the long-distance phone charge is taxable



Charges by Hotels

- Internet access services and toll charges for long-distance telephone calls furnished in connection with the accommodation are not subject to the Retail Sales and Use Tax
- Separately stated charges for services provided by an outside vendor that are not required to be purchased by the guest (such as dry cleaning services, golf and tennis lessons, or beauty services) are not subject to the sales tax
- Separately stated charges for travel protection insurance are not subject to the sales tax



Non-Traditional Accommodations

- The Department has long held (Public Documents 87-222 and 91-219) that the operation of a bed and breakfast is subject to the sales tax in the same manner as charges for hotel or motel accommodations, since they both represent charges for lodging, space or accommodations regularly furnished to transients for a consideration
- Extended stay hotels and similar lodgings also are subject to the sales tax
- However, the sales tax does not apply to accommodations supplied to a guest for a period of 90 continuous days or more
- After a guest has occupied a room or received other accommodations for 90 continuous days or more, the operator furnishing the accommodations must refund any sales tax actually collected from the person



Online Travel Companies

- Online travel companies (“OTC’s”) often enter into contracts with accommodation providers to allow guests to reserve accommodations using their online websites
- These companies often have no offices or other physical locations in Virginia
- Because most OTC’s do not have physical places of business in Virginia, this raises the issue of nexus and whether Virginia is constitutionally permitted to require the companies to collect and remit the sales tax.
- Under agreements with the accommodations providers, OTC’s generally collect the total amount that the accommodations provider charges for the room and any related fees from the customer, as well as a separate service charge for services provided by the OTC



Online Travel Companies

- Generally, the OTC collects the sales tax on the discounted room charge from the customer and remits the tax to the accommodations provider
- The amount of tax is generally bundled with other fees and charges
- In October 2006, the Tax Commissioner ruled in Public Document 06-139 that the service charges imposed by third-party intermediaries are not subject to the sales tax
- Thus the sales tax does not apply to the service charges bundled into the total charge paid by the taxpayer



Hosts and Hosting Platforms

- Many property owners seeking to rent out their primary residence utilize website hosting platforms that enable the owner to list and arrange for the property's rental
- Hosting platforms do not offer guests rooms for rent or make any sales at retail, but serve as a platform for hosts and guests to privately contract for accommodations
- The Department is not aware of any hosting platform that has a physical place of business in Virginia
- Based on the current sales tax treatment of hotels, bed and breakfasts, and OTCs, the sales tax would not apply to the hosting platform



Hosts and Hosting Platforms

- The Department has long interpreted the sales tax to be imposed on temporary rentals of private residences based upon the sales tax treatment of hotels, bed and breakfasts, and OTCs
- In each case, the charge represents a charge for lodging, space or accommodations regularly furnished to transients
- To the extent that hosts are regularly renting out their private residences for fewer than 90 days, the rentals are subject to the sales tax
- Hosts offering up their private residences for temporary rental in Virginia have a physical place of business and nexus with Virginia



Occasional Sales

- The Retail Sales and Use Tax does not apply to an “occasional sale,” which has been defined by the Department as a sale by a person who is engaged in sales on three or fewer separate occasions within one calendar year
- State law currently requires such hosts to register with the Department to collect and remit the sales tax on the rental transaction based on the location of the host, unless the transaction is an occasional sale
- Few hosts currently collect sales and use taxes on short-term rental transactions arranged through hosting platforms



Collection Arrangements

- The Department has entered into agreements that allow multi-level sellers to collect and remit sales and use taxes on behalf of their independent operators in situations where it would not be practical to register many small dealers
- The company must write in to the Department to request this type of treatment
- Generally, if the request is allowed, the company's registration does not identify the individual operators
- As part of the agreement, the company is required to maintain records of the transactions at its corporate offices
- The Department also has allowed similar arrangements with sponsors of flea markets, festivals, and other events seeking to collect taxes on behalf of their itinerant vendors



Senate Bill 416

- Senate Bill 416 sought to create a framework for hosting platforms to elect to register to collect and remit sales and use and transient occupancy taxes on behalf of the property owners listing on their websites
- If reenacted by the 2017 General Assembly, Senate Bill 416 would allow hosting platforms to elect to collect the applicable taxes and remit the total taxes to the Department on a monthly basis
- Currently, the Department may administratively elect to allow hosting platforms to collect and remit the Retail Sales and Use Tax on behalf of the hosts
- The Department has no authority to collect the local or regional transient occupancy taxes, unless the taxpayer and the locality agree to the collection.



Transient Occupancy Taxes

- Under current law, any county may, by ordinance, impose a transient occupancy tax at a maximum rate of 2% on hotels, motels, boarding houses, and other facilities offering guest rooms (*Va. Code § 58.1-3819*)
 - Several counties are authorized by statute to impose the tax at higher rates
- The tax does not apply to rooms rented on a continuous basis by the same individual or group for 30 or more continuous days
- Cities and towns are granted authority to impose a transient occupancy tax without any rate limitation under their general taxing powers pursuant to the Uniform Charter Powers Act
- 37 cities, 76 counties, and 73 towns reported imposing a local transient occupancy tax in 2015 according to *Virginia Local Tax Rates, 2015*



Transient Occupancy Taxes

- Legislation enacted in 2013, House Bill 2313, imposed a 2% state regional transient occupancy tax in Northern Virginia that is administered and collected by the locality in the same manner as the local transient occupancy tax (*Va. Code* § 58.1-1742)
- The Northern Virginia region consists of the Counties of Arlington, Fairfax, Loudoun and Prince William and the Cities of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park

